

To: SG-2, LLC (pto@nealmcdevitt.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85510511 - SHARE OF CARE - 60323.0025
Sent: 5/5/2015 10:13:10 AM
Sent As: ECOM116@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85510511

MARK: SHARE OF CARE

85510511

CORRESPONDENT ADDRESS:

RICHARD B. BIAGI
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1776 ASH ST
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APPLICANT: SG-2, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO. :

60323.0025

CORRESPONDENT E-MAIL ADDRESS:

pto@nealmcdevitt.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

ISSUE/MAILING DATE: 5/5/2015

THIS IS A FINAL ACTION.

The trademark examining attorney issued a final Office action in this application on October 16, 2014. On April 14, 2015, applicant responded by filing a notice of appeal to the Trademark Trial and Appeal Board (Board) and a request for reconsideration of the final. The Board has suspended the appeal and remanded the application to the trademark examining attorney for consideration of the request.

The request presents new evidence that must be addressed. *See* TBMP §1204; TMEP §715.04(b). Therefore, this new final Office action is being issued to address such new evidence and supersedes the previously-issued final Office action. Upon issuance of this new final Office action, the application will be returned to the Board for resumption of the appeal. *See* TBMP §1204; TMEP §715.04(b). Any further

request for the trademark examining attorney to consider this application must be made via a request for remand to the Board, for which good cause must be shown. *See* TBMP §1204; TMEP §715.04(b).

The following issue is maintained and held final: specimen fails to show the applied-for mark in use in commerce. *See* TBMP §1204; TMEP §§713.02, 715.04(b).

SPECIMEN REQUIRED – FINAL ACTION MAINTAINED AND CONTINUED

Registration is refused because the specimen does not show a direct association between the applied-for mark and the identified services; thus the specimen fails to show the applied-for mark in use in commerce for each international class. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a), 1301.04(f)(ii), (g)(i).

Specimens consisting of advertising or promotional materials generally must show a direct association between the mark and the services for which registration is sought. *See In re Universal Oil Prods. Co.*, 476 F.2d 653, 655, 177 USPQ 456, 457 (C.C.P.A. 1973); *In re HSB Solomon Assocs.*, 102 USPQ2d 1269, 1274 (TTAB 2012); TMEP §1301.04(f)(ii). While the exact nature of the services does not need to be specified in the specimen, there must be something which creates in the mind of the purchaser an association between the mark and the service. *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting *In re Johnson Controls Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)); *see In re Osmotica Holdings, Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010).

In the present case, the substitute specimen shows the mark used to identify a growth strategy concept or measurement, not to identify the source of the business and technological services identified in the application. The use of the mark with the wording “Market Share” on page 4 of the substitute specimen submitted April 4, 2015 shows use of the mark as a reference to a performance metric. It does not show the mark used in direct association with consulting, analysis, and research services.

Applicant’s argument that the specimens are acceptable because they must only reference the services broadly is not persuasive because there is no reference at all to the identified services used in connection with the applied for mark. It is used in the specimens only to refer to a growth strategy concept or measurement. Consumers would not interpret the mark as identifying the source of the services. While applicant’s specimens may refer generally to consulting, analysis, and research services, it does not show the applied for mark used in direct association with the services.

Applicant’s argument that it cannot submit other specimens due to the confidential nature of the services is not persuasive. Applicant may redact any confidential information from specimens it submits. A specimen that uses the mark in connection with the identified services in a broad sense would be acceptable; however, applicant’s specimens do not show the mark used in connection with the identified services in any way.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of services identified in the statement of use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for services include advertising and marketing materials, brochures, photographs of business signage and billboards, and webpages that show the mark used in the actual sale, rendering, or advertising of the services. *See* TMEP §1301.04(a), (h)(iv)(C).

Applicant may respond to this refusal by submitting, for each applicable international class, a different specimen (a verified [“substitute” specimen](#)) that (a) was in actual use in commerce prior to the expiration of the deadline for filing the statement of use and (b) shows the mark in actual use in commerce for the services identified in the statement of use.

Applicant, however, may not withdraw the statement of use. *See* 37 C.F.R. §2.88(g); TMEP §1109.17.

For more information about this refusal and instructions on how to submit a verified “substitute” specimen online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

/Kristina Morris/
Examining Attorney
Law Office 116
571-272-5895
kristina.morris@uspto.gov (informal queries only)

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **5/5/2015** FOR U.S. APPLICATION SERIAL NO. 85510511

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **5/5/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.